AMERICAN ECONOMIC LIBERTIES PROJECT

How Congress and the Federal Energy Regulatory Commission Can Lower Electric Utility Bills

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National residential electricity prices have increased, in nominal terms, by **33%** since 2019. One-third of American households now dedicate **more than 5%** of their income to electricity bills, something that is a large contributor to the nation's affordability crisis.[1] Recent polling conducted in 62 battleground congressional districts shows that 90% of battleground voters think that there is something that Congress can do to bring down utility bills, and 41% of respondents described action to lower utility bill costs as either the top or second-highest priority that Congress should undertake.[2]

Americans' intuition that Congress can do something is correct. While the regulatory structure is complicated, at every level the rules are biased in favor of utility shareholders and against ratepayers. So, Congress can fix the federal component of the problem, while state legislatures will have to address costs jurisdictional to the states.

The vast majority of customers' electricity bills are determined by three costs: generation, distribution, and transmission. How and who regulates each category varies. In accordance with the Federal Power Act of 1935, regulation of the United States' utility sector is shared between states and the federal government. The federal government — through the Federal Energy Regulatory Commission ("FERC" or "the Commission") — exercises jurisdiction over transmission planning, rates, and cost recovery approval for the lower 48 states, with the exception of Texas.

Given this authority, Congress can enact legislation that directs FERC to adjust aspects of its regulation of transmission utilities and power markets, things that would result

1 Ryan Wiser, Galen Barbose, Will Gorman, Eric O'Shaughnessy, Sydney Forrester, Paul Donohoo-Vallett, Peter Cappers, Jeffrey Deason, Ryan Hledik, and Long Lam, "Retail Electricity Price Trends and Drivers: Data Update - 2026 Edition," Lawrence Berkeley National Laboratory and The Brattle Group (April 2026), slide 4, https://emp.lbl.gov/sites/default/files/2026-03/Retail%20Price%20Trends_2026%20edition.pdf.

2 "Perceptions of Utility Costs in the Congressional Battleground," Navigator Research (March 12, 2026), slides 6 & 10, https://navigatorresearch.org/wp-content/uploads/2026/03/Navigator-Update-03.12.2026.pdf.

in both immediate savings to customers while also initiating necessary longer-term structural reforms. Taking up just one of these recommendations to reform the way profit levels are determined for privately held, for-profit utilities could set in motion significant savings. A recent estimate by Economic Liberties suggests addressing excessive profits that accrue to utilities through bloated rates of return could save American families **nearly $500 per year** if tackled at both the state and federal levels.[3]

The following issue brief offers a primer on state and federal regulatory authorities through the lens of a customer's monthly electric bill, including background on FERC and recent developments in the transmission sector. It concludes with several federal policy recommendations.

Preview of Federal Policy Recommendations

POLICY (1): Address bloated utility profits to lower electric transmission rates

Congress should pass legislation codifying that a just and reasonable rate of return for transmission providers is equal to the utility's cost of capital. Addressing excessive profits that accrue to utilities through bloated rates of return could save American families nearly **$500 per year** if tackled at both the state and federal levels.

POLICY (2): Direct a systematic review and removal of "FERC candy"

Congress should direct the immediate sunsetting of FERC's practice of layering incentives on top of already-bloated returns. Transmission providers are being rewarded with extra profits for things they would do anyway.

POLICY (3): Ban utilities from charging ratepayers for the costs of their political influence activities

Congress should mandate that FERC ban cost recovery in rates for utilities' political influence activities. A rulemaking on this topic languished at the Commission since 2021 before being abruptly closed without action in April 2026, all while customers continue to pay for utilities' political influence activities as part of their monthly electric bills.

POLICY (4): Reverse presumptions of prudence in the formula rate process

Congress should tell FERC to do its job and hold utilities accountable. Currently, the burden is on other parties to demonstrate that the utility's expenditures are not prudent or reasonable.

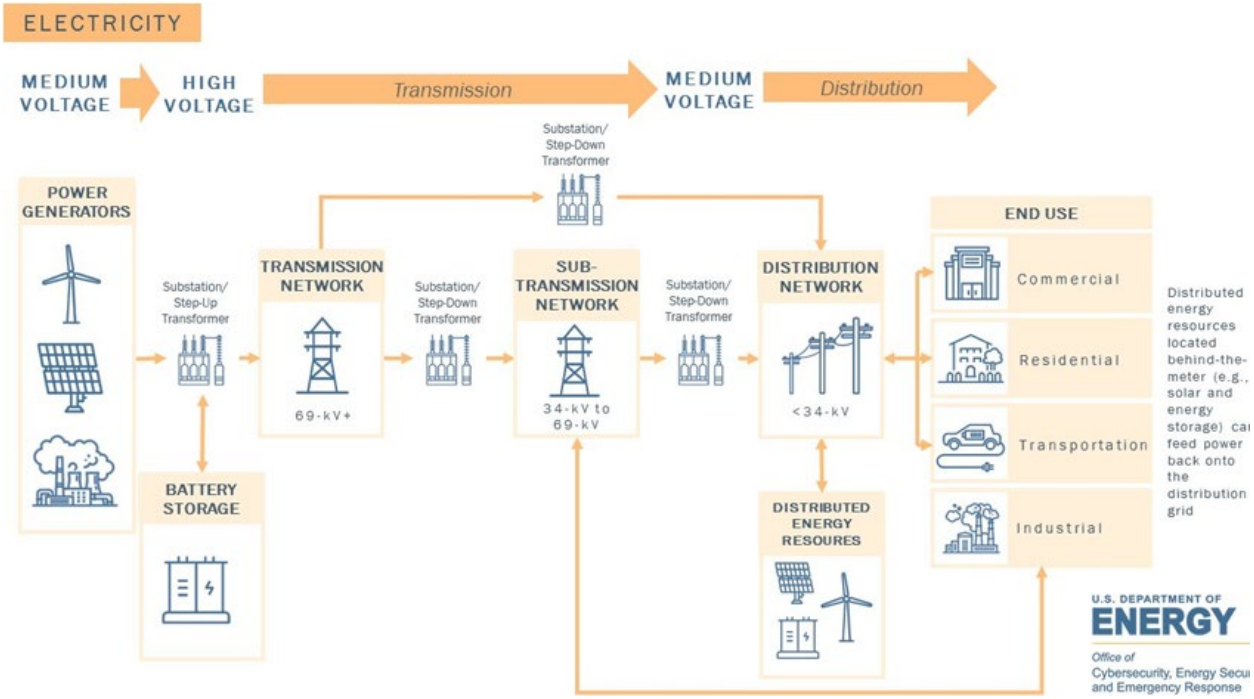
POLICY (5): Establish rules to enhance FERC's transmission data collection practices, then proactively share this information with state PUCs

The asymmetric access to information between utilities and everyone else — including their regulators — complicates accountability and enforcement actions. Congress can start to bridge the gap by passing legislation mandating that FERC enhance its data collection practices and proactively share this information with state counterparts.

3 Estimated as follows: as of March 31, 2026, the S&P 1500 Utilities Index had a market capitalization of approximately $1.566 trillion and a next-12-month forward price/earnings ratio of 18.98; dividing market capitalization by the forward P/E ratio implies expected next-12-month after-tax earnings of approximately $82.5 billion. The S&P 1500 Water Utilities Index had a market capitalization of approximately $47 billion and a forward P/E ratio of 20.46, implying expected after-tax earnings of about $2.3 billion by the same method. The electric-and-gas portion was then estimated residually by subtracting water from the broader utilities index, yielding approximately $1.52 trillion in market capitalization and $80.2 billion in expected after-tax earnings. Excess earnings for each index were estimated by multiplying expected after-tax earnings by (1-B/P), where B/P is the reciprocal of the observed price-to-book ratio. This yields approximately $48.5 billion for the Utilities Index and $1.2 billion for the Water Utilities Index. Residual excess earnings for electric and gas only were calculated as the difference, or approximately $47.3 billion. Grossing that figure up at the 25.6% US average combined state and federal income tax rate implies approximately $63.6 billion in pre-tax excess earnings recovered in rates. Dividing by 133.686 million US households yields an estimated annual household burden of approximately $476. This is a top-down proxy rather than a comprehensive census of the entire investor-owned electric and gas sector: the S&P indexes include the largest publicly traded utility holding companies but omit some non-public firms and include some non-regulated assets. It also assumes that excess costs borne initially by commercial and industrial customers are substantially borne by households in the form of higher prices, rents, and other downstream pass-throughs.

BRIEF INTRODUCTION TO ELECTRICITY COSTS & CUSTOMER BILLS

Embedded in a customer's monthly electric bill are three major cost categories: (1) **generation** (or supply); (2) **transmission**; and (3) **distribution**.



SOURCE: U.S. DOE, AVAILABLE AT: FINAL_CESER ELECTRICITY GRID BACKGROUNDER_508.PDF.

Generation refers to the actual production of power from assets like nuclear or fossil fuel-fired plants, solar arrays, and wind farms.

Transmission refers to the long-distance transport of power; the hundreds of thousands of miles of high-voltage transmission lines that connect generation to local population centers across the United States.

Distribution is the layer that directly connects to customers. It refers to the local grid that moves power via lower voltage lines to households, businesses, and industrial sites.

Transmission and distribution costs combined amount to approximately 40-50% of a customer's total bill and, together, are often referred to as the "delivery charge."[4] The

4 Kyle Mason and Robert Freudenberg, "What's in an Electric Bill?," RPA Lab (Nov. 6, 2025), https://rpa.org/news/lab/electric-bills?utm_source=copilot.com.

remainder of a customer's bill is primarily attributable to supply (generation) costs and, in some states, may also include costs to support certain state policies such as low-income energy assistance or energy efficiency programs.

It is worth noting that the delivery charge on customer bills has risen significantly in recent years. According to a recent analysis published by the Lawrence Berkeley National Laboratory and The Brattle Group, inflation-adjusted national data for 2019-2025 indicates escalating expenditures in both distribution and transmission — both of which are cited as drivers of recent cost increases.[5]

At the transmission level, capital expenditures rose significantly in several regions during this time period, particularly in the West.[6] Several factors drove this spending, including that aging transmission infrastructure — particularly assets older than 50 years — required replacement to the tune of $10 billion per year.[7] Between 2019 and 2025, transmission expenditures contributed to retail electricity price increases, especially in the PJM region,[8] New England, New York, and California.[9] In New England, for example, inflation-adjusted transmission costs increased by 0.8 cents per kWh during this period[10]; for a typical residential customer in New England, this translates into an extra $58 per household, per year — just for transmission-related increases.[11]

5 Ryan Wiser, Galen Barbose, Will Gorman, Eric O'Shaughnessy, Sydney Forrester, Paul Donohoo-Vallett, Peter Cappers, Jeffrey Deason, Ryan Hledik, and Long Lam, "Retail Electricity Price Trends and Drivers: Data Update - 2026 Edition," Lawrence Berkeley National Laboratory and The Brattle Group (April 2026), slide 29, https://emp.lbl.gov/sites/default/files/2026-03/Retail%20Price%20Trends_2026%20edition.pdf.

6 Ryan Wiser et al., "Recent Retail Electricity Price Trends: What Do We Know … or Think We Know?," LBNL and The Brattle Group (Oct. 2025), slide 14, https://eta-publications.lbl.gov/sites/default/files/2025-10/presentation_retail_price_trends_drivers.pdf.

7 Id., slide 13.

8 PJM Interconnection is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, collectively serving over 67 million customers. "Who We Are," PJM (last visited March 31, 2026), https://www.pjm.com/about-pjm/who-we-are.aspx.

9 Ryan Wiser, Galen Barbose, Will Gorman, Eric O'Shaughnessy, Sydney Forrester, Paul Donohoo-Vallett, Peter Cappers, Jeffrey Deason, Ryan Hledik, and Long Lam, "Retail Electricity Price Trends and Drivers: Data Update - 2026 Edition," Lawrence Berkeley National Laboratory and The Brattle Group (April 2026), slide 29, https://emp.lbl.gov/sites/default/files/2026-03/Retail%20Price%20Trends_2026%20edition.pdf.

10 Id.

11 This calculation assumes an average monthly usage of 601 kWh per New England household, with a range of 550 kWh/month (Maine) to 695 kWh/month (Connecticut). "2024 Average Monthly Bill - Residential," U.S. Energy Information Administration (2024), https://www.eia.gov/electricity/sales_revenue_price/pdf/table_5A.pdf.

OVERVIEW OF REGULATORY AND MARKET STRUCTURE

Generation

The regulatory and market structure with respect to generation resources, or the supply component of a customer's monthly electric bill, varies by state. In short, it depends on whether a state permits regulated utilities to own generation resources. States that have "restructured" their markets do not permit their electric utilities to own generation assets. In these states, utilities participate in competitive wholesale electricity markets in order to procure electricity on behalf of their customers. The generation resources fall outside of the states' regulatory purview in this model.

Conversely, states that remain "vertically integrated" permit regulated utilities to own all or some generation assets. These states exercise a greater degree of oversight regarding the resource portfolio used by the utility to serve its customers. Utilities in vertically integrated states still can, however, participate in wholesale electricity markets.

Across these two structures, two-thirds of electric utility customers nationwide are served by utilities that source their power from competitive wholesale electricity markets. The remainder of customers are served by wholly vertically integrated utilities that do not participate in competitive markets to any degree but instead rely on state regulation to set prices. In states that rely in full or in part on competitive wholesale electricity markets, regional transmission organizations (RTOs) and independent system operators (ISOs) operate to, among other things, oversee the market participation (i.e., energy trading activities, or the market transactions, sales, and purchases of electricity across the financial markets[12]) by independent power producers and generators — all under the supervision of FERC (with the exception of the Electric Reliability Council of Texas, or ERCOT).

ISOs and RTOs emerged in the late 1990s in response to federal policies, such as FERC Order Nos. 888 and 2000, which endeavored to provide open access to transmission lines in an effort to permit competition among generation resources. To further this objective, the ISOs/RTOs took on the role of neutral market operators, tasked with enabling competition while maintaining reliability.

12 While the type and structure of electricity financial markets vary across the RTO/ISO regions, they all generally include day-ahead, real-time, and ancillary services markets. Day-ahead markets generally encompass 95% of all market transactions, sales, and purchases of electricity, relying on the next day's forecasted load. Conversely, real-time markets vary minute-to-minute and allow for the sale and purchase of electricity to meet any differences between the day-ahead projections and actual real-time demand. Ancillary services markets capture the services necessary to maintain transmission system operations and to provide reliability support. "Electricity Markets - 101," NGA (last visited April 1, 2026), https://www.nga.org/electricity-markets/.

Currently, there are seven RTOs/ISOs operating in the United States: (1) the California ISO (CAISO); (2) ERCOT; (3) Midcontinent ISO (MISO); (4) Southwest Power Pool (SPP); (5) PJM Interconnection (PJM); (6) New York ISO (NYISO); and (7) New England ISO (ISO-NE). Collectively, these markets function to ensure that the electricity system served by the RTO or ISO is able to meet electricity demand at all times.

SOURCE: SUSTAINABLE FERC, AVAILABLE AT: HTTPS://SUSTAINABLEFERC.ORG/ AND NATIONAL GOVERNORS ASSOCIATION, AVAILABLE AT: HTTPS://WWW.NGA.ORG/ELECTRICITY-MARKETS/.

Transmission

As discussed above, certain regions of the country enjoy competition in the pricing and development of generation resources. But what about competition in the delivery of electricity — does it exist? In theory, competition exists at the transmission level (due to repeated attempted interventions by FERC), but not in practice — at least not meaningfully so. This is an outgrowth of how the U.S. electricity grid developed.

While originally approved to act as monopoly service providers at the distribution grid level, over time the investor-owned utilities (IOUs) extended their services by building transmission lines to other IOUs, sometimes located in neighboring jurisdictions across state lines, thereby triggering federal oversight (due to interstate commerce). FERC primarily exercises this jurisdiction through oversight of transmission planning processes, which, similar to the above discussion on generation resources, varies depending on whether or not the utilities participate in markets administered by an RTO or ISO. While utilities operating in non-RTO/ISO states (with the exception of Texas, because it does not engage in interstate transmission) must still abide by FERC's major transmission planning rules (such as Order Nos. 1000 and 1920), they are not subject to the additional rulemakings

propagated by FERC for RTOs/ISOs, such as the ones designed to encourage competition in RTO/ISO transmission planning processes.

Unfortunately, however, even in regions served by RTOs/ISOs, there exists very little actual competition in the sense of what the term "market" usually conveys; in other words, the overwhelming majority of transmission providers remain the same incumbent IOU that serves the distribution grid, rather than a merchant competitor. This is in direct contravention to a series of directives issued by FERC between 1996 and 2011, which were intended to open interstate power systems to competition.[13] Despite FERC's initial efforts, the IOUs' resistance to reforms and defense of the status quo have led to decades of anti-competitive practices in the transmission space resulting in higher prices for families and businesses.[14] As a result, IOUs continue to build and rebuild increasingly localized transmission projects (i.e., transmission lines within their existing state-granted footprints) at a time when regional planning and long-range connectivity is what's needed.

Distribution

While the specifics may vary, the distribution grid is regulated by states in a similar manner regardless of whether or not the state participates in competitive wholesale electricity markets. At the distribution grid level, utility companies are considered "natural monopolies" because one company can provide service to customers in the designated footprint at a lower cost than multiple competing firms; there are insurmountable barriers to entry for multiple providers due to the high fixed costs of providing service. As a result, states acted in the 20th century to extend monopoly franchises to designated utility providers; in exchange, the utility agreed to provide universal service within its footprint at a reasonable cost and to be subject to regulation of the rates they can charge customers. Typically, these monopoly service providers are investor-owned utilities (IOUs).[15]

State-jurisdictional utility regulatory proceedings are primarily carried out by independent agencies referred to as state public utilities commissions (PUCs). State PUCs generally exercise jurisdiction over privately owned local distribution assets (the infrastructure located in, above, and below our communities that delivers electricity, natural gas, or water to households and businesses) and the investor-owned utilities (IOUs) that own

13 See, e.g., FERC Order No. 888 (April 24, 1996), available at: https://www.ferc.gov/industries-data/electric/industry-activities/open-access-transmission-tariff-oatt-reform/history-oatt-reform/order-no-888; FERC Order No. 2000 (Dec. 20, 1999), available at: https://www.ferc.gov/sites/default/files/2020-06/OrderNo.2000.pdf.

14 Ari Peskoe, "Is the Utility Transmission Syndicate Forever?," Energy Law Journal (Jan. 21, 2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3770740.

15 Approximately 70% of American households receive electricity and 95% receive natural gas deliveries from investor-owned utilities (IOUs); the remainder receive service from municipally or cooperatively owned utilities. In some states, the public utilities commission may maintain at least partial regulatory control over some cooperative electric associations. In other jurisdictions, the publicly or cooperatively owned utilities are not regulated by the state PUC at all.

this infrastructure. This extends to a review of the IOU's expenditures on distribution infrastructure, the IOU's profits, and the rates charged to customers to recover these investments.

A DEEPER DIVE ON FERC

In accordance with the Federal Power Act of 1935, regulation of the United States' utility sector is shared between states and the federal government.[16] With regard to electricity regulation, state public utility commissions have primary jurisdiction over distribution costs, while the federal government regulates interstate activities. While many federal agencies may play a role in certain aspects of energy policy, FERC is the main regulatory body.[17] FERC's jurisdiction focuses on the rates and cost recovery approval for infrastructure that provides interstate transmission of natural gas, oil, and electricity, while also overseeing interstate electricity markets, among other responsibilities.

AGENCY OVERVIEW

FERC was established in 1977 as an independent agency to regulate the interstate transmission of electricity, natural gas, and oil.[18] FERC also oversees the licensing reviews of hydropower projects, as well as the review of proposals to construct liquefied natural gas (LNG) terminals and interstate natural gas pipelines.[19]

Following the enactment of the Energy Policy Act of 2005, FERC's mandate was expanded to include, among other things, the responsibility to monitor and investigate energy markets; administer accounting and financial reporting regulations; review certain mergers and acquisitions by electric companies; and review electric transmission siting applications under certain limited circumstances.[20] But FERC's "bread-and-butter" remains the regulation of public utility transmission in interstate commerce and sales for resale in interstate commerce.[21]

16 Federal Power Act, codified as 16 U.S. Code Chapter 12.

17 Some additional federal agencies maintain roles with respect to energy sector regulation, but they are not the subject of this brief. The Department of Energy, subject to congressional oversight, can create and modify federal programs, set standards, or provide grant, loan, or programmatic funding through appropriations. The Securities and Exchange Commission regulates the securities, financial reporting, and market activities of utilities, and the Department of Justice regulates utilities through antitrust enforcement and competition policy. Additionally, the U.S. Environmental Protection Agency (EPA) previously issued regulations pertaining to air pollutant emissions from power plants, and the Department of Interior (DOI) oversees some aspects of the permitting and siting of generation and transmission lines that cross federal lands.

18 Dept. of Energy Organization Act, 42 U.S.C. 7134, 7171(a).

19 "What is FERC?," Federal Energy Regulatory Commission (Oct. 6, 2025), https://www.ferc.gov/what-ferc.

20 "What FERC Does," Federal Energy Regulatory Commission (June 18, 2025), https://www.ferc.gov/what-ferc-does.

21 Lawrence R. Greenfield, "An Overview of the Federal Energy Regulatory Commission and Federal Regulation of Public Utilities," Federal Energy Regulatory Commission (June 2018), https://www.ferc.gov/sites/default/files/2020-07/ferc101.pdf.

FERC's mission is to "assist consumers in obtaining reliable, safe, secure, and economically efficient energy services at a reasonable cost through appropriate regulatory and market means."[22] In doing so, it must abide by laws enacted by Congress as well as applicable legal precedent.

There are five commissioners of FERC. The commissioners serve staggered five-year terms, with no more than three members from the same political party at any given time. The president nominates FERC commissioners, subject to the advice and consent of the Senate. Decisions[23] issued by FERC are reviewable by a court, and thus the agency is technically independent from direct presidential or congressional oversight subsequent to the appointment and confirmation process.

HOW FERC REGULATES TRANSMISSION

Transmission planning

The Commission's jurisdiction currently extends to transmission planning across the lower 48 states, with the exception of ERCOT, and to transmission planning processes administered by FERC-jurisdictional RTOs/ISOs in their roles as transmission operators. Within the past two decades, FERC has taken significant action regarding transmission planning through the adoption of notable orders (e.g., FERC Order Nos. 1000 and 1920), which outline parameters and directives intended to leverage the benefits of long-term, coordinated, regional planning. For example, among other things, FERC Order No. 1000 requires that each transmission provider participate in a regional transmission planning process that has a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan[24]; FERC Order No. 1920 focuses on requirements to initiate long-term, scenario-based regional transmission planning.[25]

FERC has also advanced additional rulemakings specific to the competitive wholesale electricity markets administered by RTOs/ISOs; however, utilities that do not participate in any centralized markets, like those in the Southeast and the West (outside of California), are not subject to FERC rulemakings regarding RTOs/ISOs. These utilities generally remain vertically integrated (they can own rate-regulated generation assets) and have

22 "What is FERC?," Federal Energy Regulatory Commission (Oct. 6, 2025), https://www.ferc.gov/what-ferc.

23 On the third Thursday of each month except August, FERC holds an "open meeting" where the commissioners convene to vote on regulatory matters; this is where legally binding decisions are adopted. While the meetings are held in person at FERC's headquarters, they are also broadcast and recorded. At least seven days prior to a meeting, the Commission will post the details to its event calendar and make some associated documents available.

24 FERC Order No. 1000 (July 21, 2011), https://www.ferc.gov/sites/default/files/2020-04/OrderNo.1000.pdf.

25 FERC Order No. 1920 (May 13, 2024), https://www.ferc.gov/news-events/news/ferc-takes-long-term-planning-historic-transmission-rule.

overall been resistant to regional planning for transmission, instead relying on state-level resource planning efforts. Similarly, utilities operating in ERCOT are not subject to RTO/ISO rulemakings, since ERCOT is not currently an interstate transmission operator and is instead primarily overseen by the Texas PUC.

Formula ratemaking and inflated profits

FERC also regulates the rates and cost recovery approval for transmission providers across the lower 48 states, with the exception of the ERCOT region of Texas.

Collectively, the laws and legal precedent by which the Commission is bound require FERC to establish just and reasonable rates that are sufficient — but no more than sufficient — for a regulated utility to recover the actual and prudent costs incurred in providing service to its captive customers. In doing so, the Commission adjudicates the regulated entity's cost of capital used for ratemaking purposes, which is the weighted average cost of debt (average interest rates on long-term debt issuances) combined with the cost of preferred and common equity. This constitutes the rate of return relied on by utilities to attract investment from the markets in order to maintain and upgrade essential infrastructure. As specified by the U.S. Supreme Court in its landmark 1944 Hope Natural Gas decision, the prudent cost of capital that is allowed to be recovered in rates is the cost determined by the financial markets; "the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks."[26]

Therefore, rates are set at a level intended to cover the utility's actual costs, including a provision for ongoing operating costs (e.g., labor, rent, fuel), which are passed through with no markup, *plus* a provision to cover the utility's capital costs (e.g., poles and wires) inclusive of a return. Under this model, utilities are incentivized to over-invest in capital expenditures, rather than in operational efficiencies or technological advancements, because they are guaranteed a profit due to the opportunity to earn a sizable return on investment in capital infrastructure.

Specifically, transmission providers earn a return on all prudently incurred capital expenditures, in addition to recovering the underlying costs. This return (known as the return on equity, or ROE) is embedded in the formula rate methodology used by the Commission to determine transmission rates. Formula rates allow transmission providers to recover their stated cost of service without filing a full rate case, instead relying on a formula that automatically updates each year using new cost inputs provided by the utility.

26 FPC v. Hope Nat. Gas Co., 320 U.S. 591 (1944).

Through its formula ratemaking process, FERC operates with a presumption that costs incurred by the utility for any transmission project were done so prudently and thus are recoverable in rates from customers. Unlike in most state PUC proceedings where the evidentiary burden rests with the utility requesting the rate increase, it is the intervenors in a FERC proceeding who bear the burden to prove that costs were incurred imprudently and should be disallowed. As a result, this model makes it more difficult and less likely that any party will prevail in challenging a utility's transmission rate increase request, especially given the asymmetrical access to information between a utility, its regulator, and everyone else.

While the ROE itself is not one of the inputs that change annually in the formula ratemaking process, it continues to be a significant contributor to the resulting rate. Recent FERC-jurisdictional "base" ROEs are clustered around 10%, following updates to the Commission's methodology that took effect in 2024.[27] This methodology is producing ROEs well in excess of what market indicators suggest that equity owners require in exchange for their capital, and as a result increasing prices for customers.[28]

Notably, transmission providers are also currently eligible to receive incentive adders, which further inflate the already-bloated base ROE. These incentive adders, memorably deemed "FERC candy" by former FERC Chairman Mark Christie,[29] constitute an incentive on top of the already-generous base ROEs discussed above. Among these incentives is an ROE participation adder that increases the utility's profits above the market cost of equity by 50 basis points for simply participating in an RTO/ISO, which is both increasingly commonplace and sometimes even state mandated. Another problematic example includes the "Abandoned Plant Incentive," which effectively makes customers the insurer of last resort by allowing transmission developers to recover from customers the costs of investments in projects that fail to materialize.

27 William Scherman, Jeffrey Jakubik, John Decker, and Andrew DeVore, "Insight: FERC Issues Order on Remand for Transmission Return on Equity Methodology, but Leaves the Door Open for Future Challenges," Vinson&Elkins (Oct. 23, 2024), https://www.velaw.com/insights/ferc-issues-order-on-remand-for-transmission-return-on-equity-methodology-but-leaves-the-door-open-for-future-challenges/.

28 Mark Ellis, "Rate of Return Equals Cost of Capital: A Simple, Fair Formula to Stop Investor-Owned Utilities from Overcharging the Public," American Economic Liberties Project (Jan. 17, 2025), https://www.economicliberties.us/our-work/rate-of-return/.

29 In a May 13, 2025, dissent, former FERC Chair Mark Christie memorably deemed the ever-expanding laundry list of incentives demanded by transmission owners and paid for by customers as "FERC candy," which he argued is so routinely handed out by the Commission that little thought is given to its impact on customer bills. Chairman Christie's dissent in part is available at: https://www.ferc.gov/news-events/news/chairman-christies-dissent-part-and-concurrence-part-valley-link-incentives-award.

Other factors driving up rates

On Dec. 16, 2021, FERC issued a Notice of Inquiry (NOI) to "examine the rate recovery, reporting and accounting treatment of industry association dues and certain civic, political and related expenses, as well as whether additional transparency is needed with respect to defining donations for charitable, social, or community welfare purposes."[32] Despite a well-developed record containing dozens of filed comments, FERC closed the docket on April 16, 2026, without taking any public-facing substantive action regarding the associated rulemaking docket.

In the meantime, captive customers continue to fund the political activities of these large, for-profit utilities through rates. For example, for rates overseen by FERC (as well as in most states[33]), customers currently pay to cover the costs of utilities' membership in trade associations such as the Edison Electric Institute (EEI) and the American Gas Association (AGA). In 2018, according to IRS Form 990 filings, the combined costs of those trade association dues exceeded $100 million ($76.3 million for EEI;

MYTH: Rightsizing utility profits will discourage investment in transmission.

FACT: The idea that addressing the issue of bloated utility profits will inhibit investment in regional transmission at a time when it is most needed is not supported by the facts on the ground.

The overwhelming majority of transmission spending in the past several years has been directed to non-regional projects, even during a period when transmission providers enjoyed upward of 10% ROEs. The transmission grid buildout occurs through a combination of local projects (i.e., those that are built to serve the needs of a single utility within its own footprint) and regional projects (i.e., those that are built to meet the needs of multiple utilities through regional planning efforts). There is no prescribed formula for what constitutes the correct mix of local and regional projects, but high-voltage regional lines are an efficient way to expand the grid. Further, while the FERC-jurisdictional ROE available to local and regional transmission projects is generally not differentiated (and usually higher than the state-authorized ROE for distribution grid projects), there are different review processes for local and regional transmission projects. Specifically, local projects often lack the robust review afforded during regional planning processes and fall into a gap between state and federal oversight.[30]

For this reason, the observed trend that 90% of recent transmission spending was directed to lower-voltage local projects — against the backdrop of total transmission spending quadrupling over the past two decades[31] — is particularly concerning.

30 Claire Wayner, Chaz Teplin, and Kaja Rebane, "Mind the Regulatory Gap," RMI (2024), https://rmi.org/insight/mind-the-regulatory-gap.

31 Id.

32 "FERC Seeks Comment on Recovery, Reporting of Industry Due, Expenses," FERC News Release (Dec. 16, 2021), https://elibrary.ferc.gov/eLibrary/filedownload?fileid=82158504-D393-C922-943B-7DC47B600000.

33 Since 2023, more than 22 states have pursued legislation to prohibit the use of ratepayer dollars to fund political activities by investor-owned utilities. See Shelby Green, "Tracking State Legislation to Get Politics Out of Utility Bills," Energy & Policy Institute (May 30, 2025), https://energyandpolicy.org/tracking-states-getting-politics-out-of-utility-bills/.

$27.3 million for AGA).[34] Worse, under current FERC rules, the burden lies with advocates to challenge the inclusion of utilities' dues in customer rates, and while there have been some successes,[35] these challenges divert resources from other critical areas of concern.

In sum, the current rate-setting process at FERC inherently favors for-profit utilities to the detriment of American families and businesses. Sizeable and growing transmission expenditures are presumed prudent, bloated utility profits exceed what even Wall Street projects are required to attract and retain capital, and customers pay for the utilities' political influence activities that keep the status quo secure.

MYTH: Prohibiting rate recovery of political activities (like lobbying) will prevent utilities from engaging in these activities.

FACT: Utilities are regularly required to assign expenses to accounts "below the line" and "above the line" in accordance with the Uniform System of Accounts. Expenses assigned to accounts below the line are not recoverable in rates, but this bears no connection to the permissibility of the activity — only the utility's ability to recoup the costs from its captive customer base. In other words, prohibiting rate recovery of political activities, like lobbying done on behalf of utilities by their trade associations, will not mean that utilities or their surrogates will cease these activities, only that they will be funded by shareholders through the utility's profits.

34 EEI 2018 data available at: Edison Electric Institute - Form 990 for period ending Dec 2018 - Nonprofit Explorer - ProPublica; AGA 2018 data available at: American Gas Association - Form 990 for period ending Dec 2018 - Nonprofit Explorer - ProPublica.

35 Ari Peskoe, "Comments of the Harvard Electricity Law Initiative," FERC Docket No. RM22-5 (Feb. 22, 2022), available at: https://elibrary.ferc.gov/eLibrary/filedownload?fileid=7C68F012-31FF-C2B8-9F07-7F2401300000.

POLICY RECOMMENDATIONS

POLICY (1): ADDRESS BLOATED UTILITY PROFITS TO LOWER ELECTRIC TRANSMISSION RATES

Congress should pass legislation codifying that a just and reasonable rate of return for transmission providers[36] is equal to the utility's cost of capital, to ensure that utilities do not continue to reap excess profits through bloated transmission rates.

As discussed above, transmission ROEs are often authorized in excess of 10%. For comparison, U.S. Treasury bonds operate with returns closer to 3-4% and major asset managers project long-term returns for U.S. equities of approximately 6-7%. As such, Congress should direct FERC to immediately more closely align the ROEs available to transmission providers with market-based determinants. For example, Congress could direct FERC to align with 10-year total or large-cap projections for U.S. equity market returns generated by financial academics, financial institutions, and money center banks.[37] Recently refreshed estimates from Economic Liberties suggest addressing excessive profits that accrue to utilities through bloated rates of return could save American families nearly **$500 per year** if tackled at both the state and federal levels.

POLICY (2): DIRECT A SYSTEMATIC REVIEW AND REMOVAL OF "FERC CANDY"

In tandem with the first policy recommendation to reform base transmission ROEs, Congress should pass legislation directing a comprehensive review by FERC of the incentive adders it currently extends to transmission providers and thereafter direct the immediate sunsetting of any adder found to result in an ROE above the market cost of equity capital.

36 Under the Federal Power Act, a "transmission provider" is "any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce." 18 CFR § 37.3.
"Public utility" is defined in 16 U.S.C. § 824(e) and does not include rural electric cooperatives; federal, state, or local entities; or any other entity exempt under §201(f) of the Federal Power Act.

37 For more information on how this could be accomplished, see the state-level model legislation published by American Economic Liberties Project, which can be adapted for application to federally regulated transmission infrastructure. "Model Legislation: The Just and Reasonable Utility Prices for Consumers and Businesses Act," American Economic Liberties Project (Feb. 17, 2026), https://www.economicliberties.us/our-work/model-legislation-utility-prices/.

POLICY (3): FINALIZE RULES DISALLOWING RECOVERY IN RATES OF UTILITY POLITICAL INFLUENCE ACTIVITIES

Congress should enact legislation directing FERC to ban recovery in utility rates for industry association dues and other political influence activities. Given the well-developed record in Docket No. RM22-5, coupled with FERC's explicit decision on April 16, 2026, which closed the docket without further action, Congress can and should provide explicit guidance to FERC regarding the finalization of rules on this topic, which will expedite the process and ensure adoptioni in line with congressional intent. This should include, but is not limited to, codifying a finding that the accounting guidelines (the Uniform System of Accounts) relied on by investor-owned utilities to classify expenditures before FERC are not sufficiently modernized to reflect current utility and corporate communications practices.[38]

Additionally, Congress can unambiguously endorse the concept that utility expenditures aimed at influencing public opinion on utility regulation are presumptively not recoverable. Congress should make clear to FERC its intent that the Commission adopt a broad understanding of what constitutes a utility's efforts to influence public officials and the public at large.[39] Alternatively, Congress can look to numerous state-level efforts to define and disallow recovery of political influence activities and prescribe similar definitions here.[40]

POLICY (4): REVERSE PRESUMPTIONS OF PRUDENCE IN THE FORMULA RATE PROCESS

In most state PUC proceedings involving an application to adjust rates, the evidentiary burden rests with the utility requesting the rate increase, which intuitively makes sense. Congress should act now to establish this same expectation at the federal level.

Specifically, Congress should act to reverse FERC's current practice of presuming that all transmission expenditures are prudent. While Congress may wish to hold open the possibility of preserving this presumption for transmission projects that were subject to a robust and thorough regional planning process under certain prescribed conditions (e.g., state viewpoints were represented in the planning process; sufficient transparency into spending categories is available; etc.), the presumption of prudence should be reversed with respect to *all* other transmission infrastructure spending. This action would ensure that

38 Ari Peskoe, "Comments of the Harvard Electricity Law Initiative," FERC Docket No. RM22-5 (Feb. 22, 2022), p. 3, available at: https://elibrary.ferc.gov/eLibrary/filedownload?fileid=7C68F012-31FF-C2B8-9F07-7F2401300000.

39 Id.

40 See, e.g., California AB 1167, §3.

the evidentiary burden once again appropriately rests with the for-profit entity seeking to raise customer rates.

POLICY (5): ESTABLISH RULES TO ENHANCE FERC'S TRANSMISSION DATA COLLECTION PRACTICES, THEN PROACTIVELY SHARE THIS INFORMATION WITH STATE PUCS

State public utilities commissions are chronically under-resourced. State regulators and stakeholders alike are consistently outmatched by utility spending on expert witnesses, consultants, and outside counsel (all of which are generally recoverable in customer rates). They are also disadvantaged by the persistent information asymmetry that exists between the utilities and everyone else. This is particularly problematic in state efforts intended to bridge the regulatory gap between state and federal oversight of local transmission projects, and when dealing with the recent onslaught of large load-related issues, such as data centers.

Congress should address this issue by directing FERC to improve its own data collection rules when it comes to transmission projects. Currently, utilities are required to submit an annual form (FERC Form 1) that includes schedules intended to capture data on transmission investments, but significant gaps remain — as well as lackluster FERC enforcement of incomplete entries submitted by the utilities. By mandating standardized transmission data collection by FERC across all jurisdictional areas, Congress would enable regulators and advocates to annually access data that is key for the most accurate analysis of transmission spending trends and associated affordability impacts. Some examples of helpful reporting details include, but are not limited to, whether the investment is for a new build, reconductoring, or rebuild; whether the investment was subject to a regional planning process; and whether the project was driven by a large load.

Furthermore, in conjunction with congressional direction that FERC improve its transmission data collection practices, Congress should instruct FERC to establish processes that proactively share this and other information with state PUCs. While state PUCs can technically intervene in FERC proceedings,[41] requiring them to do so in order to request data from utilities for information that should already be readily and publicly available is an unjust and unnecessary waste of resources.

41 FERC rules allow third parties to intervene (18 C.F.R. § 385.214) or file a complaint (18 C.F.R. § 385.206).

CONCLUSION

The notion that Congress can play no role in addressing the current utility affordability crisis is a myth. Congress must act now to right size the excessive profits taken by for-profit transmission utilities. Providing legislative direction to FERC on how to address these bloated profits will provide both near-term relief and begin to address the perverse incentives inherent in our regulatory structures. And though not the subject of this brief, members can also leverage their bully pulpits in their home districts and intervene in state utility proceedings to uplift constituent concerns and highlight the impact of state action (or inaction) on utility bills.[42]

42 Lilly Solomon and Jackie Murphy, "Elected Officials Can Lower Costs by Getting Involved in Utility Rate Cases," American Economic Liberties Project (Oct. 17, 2025), https://www.economicliberties.us/wp-content/uploads/2025/11/MOC-Utility-Rate-Case-10.17.25-Final-CE.pdf

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